

Message Text

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EB-07 SY-05 OMB-01 CIAE-00 DODE-00 PM-04 H-02 INR-07

L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06

DHA-02 /096 W

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P R 081210Z JUL 76

FM AMEMBASSY BONN

TO SECSTATE WASHDC PRIORITY 0262

INFO USMISSION USBERLIN PRIORITY

AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO BRUSSELS

C O N F I D E N T I A L SECTION 01 OF 03 BONN 11478

E.O. 11652: GDS

TAGS: PGOV PFOR GW US FR UK WB UR

SUBJECT: FEDERAL PROSECUTION OF LORENZ KIDNAPPERS IN
BERLIN

REF: STATE 166421

SUMMARY. AMBASSADOR HAS CALLED ON VAN WELL TO MAKE
PRESENTATION OUTLINED REFTEL ON LORENZ PROSECUTION.
AMBASSADOR ALSO POINTED OUT THAT FEDERAL PROSECUTOR
GENERAL IN 1972 MAHLER CASE DID NOT PERSONALLY LEAD THE
PROSECUTION IN BERLIN. VAN WELL INFORMED AMBASSADOR OF
FRENCH-GERMAN DISCUSSION OF SUBJECT DURING HAMBURG
CONSULTATIONS, AS FRENCH AMBASSADOR WORMSER HAD EARLIER
DONE. VAN WELL WAS NONCOMMITTAL AS TO A
FINAL FRG POSITION BUT WE BELIEVE THERE IS A VERY GOOD
CHANCE THAT THE US POSITION WILL FORM THE BASIS OF A
FINAL AGREED SOLUTION. END SUMMARY.

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1. AMBASSADOR HILLENBRAND CALLED ON FOREIGN OFFICE POLITICAL DIRECTOR VAN WELL ON JULY 7 TO PRESENT US POSITION ON PROSECUTION IN BERLIN OF LORENZ KIDNAPPERS. AMBASSADOR BASED PRESENTATION ON TALKING POINTS PROVIDED REFTEL, BUT ALSO EMPHASIZED PRECEDENT OF 1972 MAHLER PROSECUTION IN WHICH THE FRG FEDERAL PROSECUTOR GENERAL (MARTIN) DID NOT PERSONALLY HANDLE THE CASE IN BERLIN. THE AMBASSADOR ALSO NOTED THAT THE ESCAPE ON JULY 6 OF SOME OF THE SUSPECTS MIGHT AFFECT THE TIMING OF THE PROSECUTION. HE CLOSED HIS INTIAL PRESENTATION BY STATING THAT THE US WOULD MAKE THE SAME POINTS IN THE BONN GROUP MEETING SCHEDULED FOR JULY 8.

2. VAN WELL SAID THAT THE MATTER HAD BEEN DISCUSSED ON JULY 5 BY FOREIGN MINISTERS GENSCHER AND SAUVAGNARGUES DURING THE GERMAN-FRENCH CONSULTATIONS IN HAMBURG. GENSCHER EMPHASIZED IN HAMBURG THAT THE ARREST ORDER FOR THE SUSPECTS EXPIRES AT THE BEGINNING OF AUGUST AND IT COULD NOT BE EXPECTED THAT THE COMPETENT JUDGE IN THE ABSENCE OF ACTION ON THE PROSECUTION WOULD RENEW THE ARREST ORDER. THE FRG WOULD THUS HAVE EXTREME DIFFICULTY IF THERE WERE NO DECISION ON THE PROSECUTION BY JULY 20 AT THE LATEST. VAN WELL SAID THAT SAUVAGNARGUES AGREED THAT A DECISION SHOULD BE SOUGHT BY JULY 20.

3. VAN WELL THEN REPORTED THE LONG GENSCHER-SAUVAGNARGUES DISCUSSION OF RESPECTIVE LEGAL VIEWS. SAUVAGNARGUES REPEATED THE POSITION THAT FILING THE CHARGES IN BERLIN BY THE FEDERAL PROSECUTOR GENERAL (FPG) WOULD NOT BE COMPATIBLE WITH THE WORDING OF THE QA, OR AT LEAST WOULD OPEN THE WAY TO SOVIET CHARGES THAT IT WAS IN CONFLICT WITH THE QA BECAUSE IT WOULD BE THE EXERCISE OF DIRECT STATE AUTHORITY OVER THE WSB. GENSCHER DISPUTED SAUVAGNARGUES' POSITION, REFERRING TO THE INTERPRETATION CONTAINED IN THE LETTER OF THE THREE AMBASSADORS TO THE FEDERAL CHANCELLOR WHICH HAD BEEN CONSULTED IN ADVANCE WITH THE USSR. THIS INTERPRETATION REFERRED TO THE DIRECT EXERCISE OF STATE AUTHORITY OVER THE WSB AND NOT OVER INDIVIDUALS. GENSCHER ALSO

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ARGUED THAT THE LETTER'S PARAGRAPH SMALL D STATES THAT THE ESTABLISHED PROCEDURES CONCERNING APPLICABILITY IN BERLIN OF FEDERAL LEGISLATION WERE NOT AFFECTED BY THE QA. THERE WAS ALSO THE MAY 17, 1972 CONFIDENTIAL LETTER OF THE THREE AMBASSADORS TO FOREIGN MINISTER SCHEEL WHICH STATED THAT NO CHANGES WERE FORESEEN UNDER THE QA IN THE ACTIVITIES OF THE FEDERAL COURTS IN BERLIN.

4. VAN WELL SAID THAT SAUVAGNARGUES WAS NOT ALTOGETHER UNIMPRESSED BY GENSCHER'S ARGUMENTATION. SAUVAGNARGUES SAID THAT THE FRENCH WOULD SEEK A BK/O ORDERING TRANSFER OF THE CASE OUT OF BERLIN. THE FRENCH WOULD NOT BE TOO INSISTENT ON THIS SOLUTION AND IF AGREEMENT ON SUCH A BK/O WERE NOT POSSIBLE THE MATTER COULD BE HANDLED AS HAD BEEN THE MAHLER CASE. THERE WOULD THEN BE A NEED TO

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ACTION EUR-12

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NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 SY-05 OMB-01

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FM AMEMBASSY BONN

TO SECSTATE WASHDC PRIORITY 0263

INFO USMISSION USBERLIN PRIORITY

AMEMBASSY BERLIN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

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AGREE ON A COMMON LINE TO TAKE VIS-A-VIS THE SOVIETS AND THE FRENCH WOULD BACK THIS COMMON POSITION.

5. VAN WELL SAID GENSCHER TOLD SAUVAGNARGUES HE WOULD DEFINITELY PREFER THAT THE PROSECUTION BE HANDLED AS HAD BEEN THE MAHLER CASE. GENSCHER BELIEVED THAT IF THE

PROSECUTION WERE MOVED OUT OF BERLIN ON FRG INITIATIVE THERE WOULD BE CAUSE FOR GRANTING APPEALS IN THE CASE SINCE THE PROCEDURE HAD BEEN INCORRECT. ON THE OTHER HAND, THIS WOULD NOT BE THE CASE IF THE ALLIES WERE TO ISSUE A BK/O, BUT THAT WOULD AMOUNT TO A SEVERE CASE OF ALLIED INTERPOSITION IN THE JUDICIAL PROCESS. GENSCHER THUS PREFERRED USING THE MAHLER PRECEDENT.

6. AMBASSADOR HILLENBRAND SAID THAT THE MAHLER PRECEDENT WAS ESSENTIALLY WHAT THE US PROPOSED, PLUS TREATING THE CONFIDENTIAL

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ENTIRE PROSECUTION IN LOW KEY. VAN WELL SAID THAT THE FRG WOULD STUDY HOW THE JAILBREAK MIGHT AFFECT TIMING, ETC. OF THE PROSECUTION AND SAID HE HOPED THE BONN GROUP WOULD FORMULATE A VIEWPOINT WHICH HE EXPECTED WOULD BE ALONG THE LINES OF THE POINTS MADE BY THE AMBASSADOR. THE FOREIGN OFFICE WOULD THEN PASS THE CONCLUSIONS OF THE BONN GROUP TO THE JUSTICE MINISTRY CHARACTERIZING THEM AS THE RESULT OF THE CONSULTATIONS AMONG THE FOUR AND REQUESTING THAT THEY BE TAKEN INTO CONSIDERATION AS THE FINAL POSITION OF THE FEDERAL GOVERNMENT IS DEVELOPED.

7. AMBASSADOR HILLENBRAND AGREED WITH THE PROCEDURE OUTLINED BY VAN WELL. HE SAID HE WOULD LIKE TO MAKE ONE COMMENT ABOUT THE LEGAL POSITION ON FEDERAL PROSECUTION. IT WAS CLEAR EVEN DURING THE CONCLUDING PHASE OF THE QA NEGOTIATIONS THAT THIS WAS AN AREA OF AMBIGUITY. WASHINGTON AT THAT TIME HAD RAISED THIS POINT WITH EMBASSY BONN. THE DISCUSSION LED TO THE LETTER FROM THE THREE AMBASSADORS TO THE FRG FOREIGN MINISTER. IT IS APPARENT THAT OUR LEGAL POSITION IS NOT AS CLEAR AS WE WOULD LIKE BUT THE US SHARED AND SUPPORTED THE FRG DESIRE TO CONTINUE FEDERAL PROSECUTIONS IN BERLIN.

8. AMBASSADOR WORMSER HAD CALLED AMBASSADOR HILLENBRAND EARLIER IN THE DAY OF JULY 7 TO INFORM HIM OF THE FRENCH-GERMAN DISCUSSIONS OF THE SUBJECT IN HAMBURG. WORMSER INDICATED THAT THE FRENCH WOULD "ACCEPT" A SOLUTION WHICH RESULTED IN A BK/O WHICH HAD THE EFFECT OF REMOVING THE TRIAL FROM BERLIN. HE ADDED THAT IF THERE WERE NO COMMON TRIPARTITE POSITION THE FRENCH WERE NOT IN A POSITION TO GO IT ALONE. AMBASSADOR HILLENBRAND EXPLAINED THE US POSITION AND SAID IT APPEARED THAT THE US LINE WAS NOT INCOMPATIBLE WITH THE ORIGINAL POSITION TAKEN BY SAUVAGNARGUES WITH GENSCHER. IT WAS OUR UNDERSTANDING THAT SAUVAGNARGUES' TOUGH LINE HAD

BEEN THE RESULT OF GENSCHER'S UNCOMPROMISING REJECTION
OF THE ORIGINAL SAUVAGNARGUES POSITION. WORMSER DID
NOT DEMUR FROM THIS INTERPRETATION. HE SAID HE WAS
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INSTRUCTED TO SUPPORT THE MOST STRINGENT LINE WHICH THE
US TOOK. WORMSER SAID THAT HE HAD RECENTLY HAD LUNCH
WITH FRG JUSTICE MINISTER VOGEL WHO HAD TOLD WORMSER
THAT HE COULD ACCEPT A TRIPARTITE DECISION THAT THE TRIAL
SHOULD BE HELD ELSEWHERE THAN BERLIN. FOR OBVIOUS
REASONS, HOWEVER, VOGEL WOULD NOT TAKE THE INITIATIVE

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FM AMEMBASSY BONN

TO SECSTATE WASHDC PRIORITY 0264

INFO USMISSION USBERLIN PRIORITY

AMEMBASSY BERLIN

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IN MOVING THE TRIAL.

9. COMMENT: IT IS CLEAR THAT THE FEDERAL GOVERNMENT WILL FIND IT DISTASTEFUL TO INSTRUCT THE FEDERAL PROSECUTOR GENERAL (FPG) THAT HE MAY NOT PERSONALLY BECOME INVOLVED IN THE PROSECUTION IN BERLIN. AT THE SAME TIME, THERE IS THE CLEAR MAHLER CASE PRECEDENT AND WE HEAR THAT THE CHANCELLERY IS ALSO CONCERNED ABOUT PROVOKING THE USSR ON THIS. FURTHERMORE, WE BELIEVE THERE WILL BE CLEAR TRIPARTITE AGREEMENT ON LINES OF THE US POSITION. WE ARE THUS OPTIMISTIC THAT THE GERMANS WILL AGREE TO LOW-KEY PROSECUTION BY OFFICIALS OTHER THAN BUBACK. WE ARE NOT SO SURE, HOWEVER, THAT THE FRG WILL AGREE TO ENTRUST THIS CASE TO THE FPG'S OFFICIALS PERMANENTLY STATIONED IN BERLIN. OUR UNDERSTANDING IS THAT THESE OFFICIALS ARE NOT CONSIDERED TO BE EXPERT
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ENOUGH TO ADEQUATELY HANDLE THIS IMPORTANT CASE. IF PRESSED, WE THINK WE SHOULD AGREE TO PROSECUTION BY ATTORNEYS FROM THE FRG BUT OTHER THAN BUBACK. IN ADDITION TO THE US TALKING POINTS, WE WILL SUPPORT THE BRITISH ON MEASURES SUCH AS THOSE RECOMMENDED BY LONDON WHICH WOULD SEEM TO CONTRIBUTE TO MODERATING THE SOVIET REACTION. AS NOTED ABOVE, WE WILL BE MAKING OUR PRESENTATION IN THE BONN GROUP ON JULY 8.
HILLENBRAND

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